

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Tallcorn Towers,
Petitioner-Appellant,

v.

Marshall County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-64-1148
Parcel No. 07-26-277-006

On June 23, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Tallcorn Towers, submitted evidence in support of its petition and was self-represented by Berdette (B.O.) Bryngelson. The Board of Review designated attorney Brett Ryan of Willson & Pechacek, PLC, Council Bluffs, Iowa, as its legal representative. The Board of Review submitted evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Tallcorn Towers appeals from the Marshall County Board of Review decision reassessing its property located at 134 E. Main Street, Marshalltown, Iowa. According to the property record card, the subject property consists of an eight-story, brick apartment building having 44,480 total square feet with 65 living units. The property is also improved by a 5566 square-foot, brick loading dock and canopy. The building was built in 1928 and is situated on a 0.58 acre site. The real estate was classified as commercial on the initial assessment of January 1, 2009, and valued at \$637,214, representing \$55,300 in land value and \$581,914 in improvement value.

Tallcorn Towers protested to the Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). In its opinion, the property has no value. The Board of Review denied the petition.

Tallcorn Towers then appealed to this Board and reasserted its claim of over-assessment. He also asserted a claim based on inequitable assessment under section 441.37(1)(a). Since the claim of inequitable assessment was not raised before the Board of Review, this Board can not now consider this claim. Tallcorn Towers contends the property value has declined because of economic circumstances, increased expenses, and high vacancies.

Bryngelson testified operating costs are higher for Tallcorn Towers than for newer, energy-efficient properties. He reported the company recently spent \$10,000 for air conditioning repairs. Costs of elevator inspection and repairs are between \$8,000 and \$10,000 annually. The fire alarm system requires annual inspections. Tallcorn Towers had to update the system recently with a new control box to meet revised code requirements. To meet expenses, Tallcorn Towers has lowered its insurance coverage as it can no longer afford the cost of full replacement coverage. Bryngelson testified Tallcorn Towers was forced to borrow funds to pay the real estate taxes and cash flow the business this year. He was basically arguing the value should be lower because of the cost of these improvements and necessary repairs.

The building has 20 vacant units despite routinely advertising and offering tenant incentives, such as free months rent and all-inclusive programs. Tallcorn Towers provided 2006 through 2008 income and expense information. It suggests \$71,418 profit in 2006, \$51,933 profit in 2007, and \$28,946 profit in 2008. These figures are before an estimated \$15,000 annual replacement reserves, however, property taxes are deducted as an expense. Bryngelson acknowledged the \$25,000 annual management fees, some of the maintenance expenses, which totaled approximately \$10,000 to \$18,700 annually, and some of the labor expenses totaling approximately \$18,000 to \$22,000 annually, are paid

to Bryngelson Corporation, a corporate entity with common ownership. Bryngelson testified that he draws a salary from the corporation as payment for work he does for the operation of Tallcorn Towers. Although Tallcorn Towers submitted income and expense data, an acceptable income approach to valuation was not completed, and a capitalization rate was not applied. This data does not provide any useful information for valuation purposes.

Income tax return information provided by Tallcorn Towers reports net income of \$83,738 in 2006 and \$90,221 in 2007. Figures for 2008 were not provided. Bryngelson testified that he arrived at his own valuation by starting with the original purchase price 40 years ago and applying what he determined to be a reasonable increase for subsequent years of ownership.

Assessor Craig Madill testified on behalf of the Board of Review. He reported the property is rated as very poor condition, is given a 5-05 quality grade, has 75% physical depreciation, and is given a 10% obsolescence discount. Madill indicated that no value is attributed to the basement. A nearby property Tallcorn Towers uses for tax comparison is a cooperative receiving low rent subsidies and subject to residential rollback. It is a different classification, its tax liability is calculated differently, and we do not find it comparable to Tallcorn Towers for assessment purposes.

Reviewing all the evidence, we find Tallcorn Towers did not provide sufficient evidence to establish the subject property is assessed for more than authorized by law. Although we found Bryngelson's testimony to be truthful and forthright, it was insufficient to establish the fair market value of the property. We lacked credible evidence to establish its fair market value either by sales comparison, an appraisal, or income approach valuation as of January 1, 2009.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The evidence does not support a finding the Tallcorn Towers property is assessed for

more than fair market value. We were offered no credible evidence such as sales from comparable properties, or a complete income approach valuation, supporting a lesser value.

Therefore, we affirm the Tallcorn Towers property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$637,214, representing, \$55,300 in land value and \$581,914 in improvement value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Marshall County Board of Review is affirmed.

Dated this 3 day of AUGUST 2010.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Karen Oberman
Karen Oberman, Board Chair

Richard Stradley
Richard Stradley, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>8.3, 2010</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>